



GENERAL ASSEMBLY

COMMONWEALTH OF KENTUCKY

2014 REGULAR SESSION

HOUSE BILL NO. 279

FRIDAY, FEBRUARY 21, 2014

The following bill was reported to the Senate from the House and ordered to be printed.

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ALISON LUNDERGAN GRIMES
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY L. Adler

1 AN ACT relating to the Commonwealth postsecondary education prepaid tuition
2 trust fund.

3 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

4 ➔ Section 1. KRS 164A.700 is amended to read as follows:

5 As used in KRS 164A.700 to 164A.709, unless the context requires otherwise:

6 (1) "Academic year" means the time period specified by each eligible educational
7 institution;

8 (2) "Board" means the board of directors of the Kentucky Higher Education Assistance
9 Authority acting in the capacity of the board of directors of the Commonwealth
10 postsecondary education prepaid tuition trust fund;

11 (3) "Eligible educational institution" means an institution defined in the Internal
12 Revenue Code of 1986, as amended, 26 U.S.C. sec. 529(e)(5);

13 (4) "Fund" means the prepaid tuition payment fund created in KRS 164A.701 and
14 known as the "Commonwealth Postsecondary Education Prepaid Tuition Trust
15 Fund" or "Kentucky's Affordable Prepaid Tuition" (KAPT);

16 (5) "Prepaid tuition" means the amount of tuition estimated by the board for the tuition
17 plan under the prepaid tuition contract;

18 (6) "Prepaid tuition academic year conversion" means the difference between the
19 amount of prepaid tuition required in the original prepaid tuition contract and the
20 amount of prepaid tuition required in an amended prepaid tuition contract as the
21 result of the change in the academic year;

22 (7) "Prepaid tuition academic year conversion shortfall" means the amount by which
23 the prepaid tuition required in an amended prepaid tuition contract as the result of
24 the change in the academic year exceeds the amount of prepaid tuition required in
25 the original prepaid tuition contract;

26 (8) "Prepaid tuition account" means the account for a qualified beneficiary as specified
27 in the prepaid tuition contract;

- 1 (9) "Prepaid tuition contract" means the contract entered into by the board and the
2 purchaser for the purchase of prepaid tuition for a qualified beneficiary to attend any
3 eligible educational institution as provided in KRS 164A.700 to 164A.709;
- 4 (10) "Prepaid tuition conversion" means the difference between the value of a prepaid
5 tuition account and the tuition at an eligible educational institution;
- 6 (11) "Prepaid tuition conversion shortfall" means the amount by which the actual tuition
7 cost at an eligible educational institution exceeds the amount of the value of a
8 prepaid tuition account;
- 9 (12) "Purchaser" means a person, corporation, association, partnership, or other legal
10 entity who enters into a prepaid tuition contract;
- 11 (13) "Qualified beneficiary" means a designated beneficiary, as defined in 26 U.S.C. sec.
12 529(e)(1), who is:
- 13 (a) A Kentucky resident designated as beneficiary at the time a purchaser enters
14 into a prepaid tuition contract; or
- 15 (b) A nonresident designated at the time a purchaser enters into a prepaid tuition
16 contract who intends to attend an eligible institution in Kentucky; or
- 17 (c) A new beneficiary, in the case of a change of beneficiaries under provisions of
18 KRS 164A.707; or
- 19 (d) An individual receiving a scholarship in the case of a prepaid tuition contract
20 purchased by a state or local government or agency or instrumentality thereof
21 or an organization described in 26 U.S.C. sec. 501(c)(3), and exempt from
22 federal income taxation pursuant to 26 U.S.C. sec. 501(a) as part of a
23 scholarship program offered by the government entity or the organization;
- 24 (14) "Qualified postsecondary education expenses" means qualified higher education
25 expenses as defined in 26 U.S.C. sec. 529(e)(3);
- 26 (15) "Tuition" means the prevailing tuition and all mandatory fees charged as a condition
27 of full-time enrollment in an undergraduate program for an academic year for a

- 1 qualified beneficiary to attend an eligible educational institution;
- 2 (16) "Tuition Account Program Office" or "office" means the office in the Kentucky
3 Higher Education Assistance Authority that is responsible for administering the
4 prepaid tuition program and its accounts;
- 5 (17) "Tuition plan" means a tuition plan approved by the board and provided under a
6 prepaid tuition contract;[and]
- 7 (18) **"Utilization period" means the period of time in which a prepaid tuition contract**
8 **is to be used beginning with the projected college entrance year and continuing**
9 **for the number of prepaid tuition years purchased; and**
- 10 **(19) "Value of a prepaid tuition account" means the amount which the fund is obligated**
11 **to pay for a prepaid tuition contract, when a purchaser has paid it in full,**~~tuition~~
12 ~~for an academic period based on full payment of the purchaser's tuition plan]~~ **that is**
13 **calculated by multiplying the plan tuition amount for the academic period by the**
14 **number of prepaid tuition years purchased, less any portion previously paid;**
15 except, under a tuition plan for private colleges and universities, tuition shall be
16 calculated based on the same percentage that University of Kentucky tuition is
17 increased from the year the prepaid tuition contract is purchased to the year of
18 payment.
- 19 ➔Section 2. KRS 164A.705 is amended to read as follows:
- 20 (1) The prepaid tuition contract entered into by the purchaser and the board shall
21 constitute an irrevocable pledge and guarantee by the fund to pay for the tuition of a
22 qualified beneficiary upon acceptance and enrollment at an eligible educational
23 institution in accordance with the tuition plan purchased.
- 24 (2) A board member or any employee of the Tuition Account Program Office or the
25 Kentucky Higher Education Assistance Authority shall not be subject to any
26 personal liability by reason of his or her issuance or execution of a prepaid tuition
27 contract under KRS 164A.700 to 164A.709.

- 1 (3) Under a tuition plan for private colleges and universities, tuition shall be paid based
 2 on the same percentage that University of Kentucky tuition is increased from the
 3 year the prepaid tuition contract is purchased to the year of payment.
- 4 (4) The purchaser or qualified beneficiary shall pay to the eligible educational
 5 institution the amount of any prepaid tuition academic year conversion shortfall and
 6 the amount of any prepaid tuition conversion shortfall.
- 7 (5) A qualified beneficiary attending an eligible educational institution may apply the
 8 value of a prepaid tuition account to a specific academic year at the maximum
 9 course load or maximum number of credit hours generally permitted to full-time
 10 undergraduates at that institution.
- 11 (6) The value of a prepaid tuition account remaining after tuition is paid may be used
 12 for other qualified educational expenses under administrative regulations
 13 promulgated by the board in compliance with 26 U.S.C. sec. 529. The board may
 14 permit the use of the value of a prepaid tuition account for part-time undergraduate
 15 enrollment or graduate programs at eligible educational institutions.
- 16 (7) During an account's utilization period, the value of the prepaid tuition account
 17 shall increase consistent with tuition rates for the applicable tuition plan and
 18 academic year. If all tuition benefits have not been used at the conclusion of this
 19 period, the account value shall increase at a rate of three percent (3%) per
 20 annum or the applicable tuition plan value increase, whichever is less, for a
 21 period not to exceed two (2) additional years. No additional value shall be added
 22 to a prepaid tuition account after two years past the utilization period.
- 23 **(8)** If a qualified beneficiary attends an eligible educational institution for which
 24 payment of tuition is not guaranteed by the fund in whole or in part, and if the cost
 25 of tuition exceeds the value of a prepaid tuition account, the fund shall have no
 26 responsibility to pay the difference. If the value of a prepaid tuition account exceeds
 27 the cost of tuition, the excess may be used for other qualified postsecondary

1 education expenses as directed by the purchaser.

2 ~~(9) [(8)]~~ The value of a prepaid tuition account shall not be used in calculating personal
 3 asset contribution for determining eligibility and need for student loan programs,
 4 student grant programs, or other student aid programs administered by any agency
 5 of the Commonwealth, except as otherwise may be provided by federal law.

6 ➔Section 3. KRS 164A.707 is amended to read as follows:

7 (1) Purchasers buying prepaid tuition for a qualified beneficiary shall enter into prepaid
 8 tuition contracts with the board. These contracts shall be in a form as shall be
 9 determined by the office. The contract shall provide for the purchase of a tuition
 10 plan for prepaid tuition for the qualified beneficiary from one (1) to five (5) specific
 11 academic years.

12 (2) Upon written notification to the office a purchaser may amend the prepaid tuition
 13 contract to change:

14 (a) The qualified beneficiary, in accordance with 26 U.S.C. sec. 529;

15 (b) The projected college entrance year~~[academic year or years]~~ for which
 16 prepaid tuition is purchased. Beginning with the effective date of this Act, if
 17 the amendment extends the projected college entrance year, the utilization
 18 period shall begin with the initial projected college entrance year;

19 (c) A tuition plan designation to another tuition plan designation;

20 (d) The number of years for which prepaid tuition is purchased; or

21 (e) Other provisions of the prepaid tuition contract as permitted by the board.

22 (3) A prepaid tuition account shall not be subject to attachment, levy, or execution by
 23 any creditor of a purchaser or qualified beneficiary. Prepaid tuition accounts shall be
 24 exempt from all state and local taxes including, but not limited to, intangible
 25 personal property tax levied under KRS 132.020, individual income tax levied
 26 under KRS 141.020, and the inheritance tax levied under KRS Chapter 140.
 27 Payments from a prepaid tuition account used to pay qualified postsecondary

1 education expenses, or disbursed due to the death or disability of the beneficiary, or
2 receipt of a scholarship by the beneficiary shall be exempt from tax liabilities.

3 (4) Nothing in KRS 164A.700 to 164A.709 or in a prepaid tuition contract shall be
4 construed as a promise or guarantee that a qualified beneficiary shall be admitted to
5 an eligible educational institution, be allowed to continue to attend an eligible
6 educational institution after having been admitted, or be graduated from an eligible
7 educational institution.

8 (5) Prepaid tuition contract payments shall not be made in real or personal property
9 other than cash and shall not exceed the prepaid tuition. Prepaid tuition contract
10 payments may be made in a lump sum or installments.

11 (6) The purchaser shall designate the qualified beneficiary at the time the purchaser
12 enters into a prepaid tuition contract, except for a prepaid tuition contract purchased
13 in accordance with KRS 164A.700(13)(d). In the case of gifts made to the fund, the
14 board shall designate a qualified beneficiary at the time of the gift.

15 (7) The prepaid tuition contract shall provide that the purchaser and the qualified
16 beneficiary shall not directly or indirectly or otherwise control the investment of the
17 prepaid tuition account or earnings on the account. Payments made for prepaid
18 tuition shall be accounted for separately for each qualified beneficiary. No interest
19 or earnings on a prepaid tuition contract of the purchaser or qualified beneficiary
20 shall be pledged or otherwise encumbered as security of a debt.

21 (8) A prepaid tuition contract does not constitute a security as defined in KRS 292.310
22 or an annuity as defined in KRS 304.5-030.

23 (9) Each prepaid tuition contract is subject to, and shall incorporate by reference, all
24 operating procedures and policies adopted by the board, the statutes governing
25 prepaid tuition contracts in KRS 164A.700 to 164A.709 and 393.015, and
26 administrative regulations promulgated thereunder. Any amendments to statutes,
27 administrative regulations, and operating procedures and policies shall

1 automatically amend prepaid tuition contracts, with retroactive or prospective
2 effect, as applicable.

3 ➔Section 4. KRS 164A.709 is amended to read as follows:

4 (1) A purchaser may terminate a prepaid tuition contract at any time upon written
5 request to the office.

6 (2) Upon termination of a prepaid tuition contract at the request of a purchaser, the
7 office shall pay from the fund to the purchaser:

8 (a) The value of the prepaid tuition account or, if the contract has not been paid
9 in full, a pro-rata amount calculated according to the portion of the plan
10 that had been paid, if the contract is terminated for the death of the qualified
11 beneficiary or the disability of the qualified beneficiary that, in the opinion
12 of the office, would make attendance by the beneficiary at an eligible
13 educational institution impossible or unreasonably burdensome;[-

14 1. ~~The death of the qualified beneficiary; or~~

15 2. ~~The disability of the qualified beneficiary that, in the opinion of the~~
16 ~~office, would make attendance by the beneficiary at an eligible~~
17 ~~educational institution impossible or unreasonably burdensome; or~~

18 3. ~~A request made on or after July 1 of the initial projected year of~~
19 ~~enrollment of the qualified beneficiary; and]~~

20 (b) The amounts paid on the purchaser's prepaid tuition contract if the contract is
21 terminated and a request for refund is made before July 1 of the qualified
22 beneficiary's projected college entrance year~~[initial projected year of~~
23 ~~enrollment]~~. The board may determine a rate of interest to accrue for payment
24 on the amount otherwise payable under this paragraph;

25 (c) The value of the prepaid tuition account for the 2014-2015 academic year
26 for accounts with a utilization period end date prior to 2012; or

27 (d) The value of the prepaid tuition account at the end of the account's

1 utilization period plus three percent (3%) per annum for a maximum of two
 2 (2) years thereafter, or the applicable tuition plan value increase, whichever
 3 is less, for accounts with a utilization period end date of 2012 or later.

4 (3) ~~[At the option of the purchaser, the value of the prepaid tuition account may be~~
 5 ~~carried forward to another academic year or distributed by the fund upon the~~
 6 ~~purchaser's request.~~

7 (4) ~~]~~All refunds paid shall be less any benefits previously paid from the plan and
 8 any~~[net of]~~ administrative fees as determined by the board. The office may impose a
 9 fee upon termination of the account for administrative costs and deduct the fee from
 10 the amount otherwise payable under this section.

11 ~~(4)~~~~[(5)]~~ If a qualified beneficiary is awarded a scholarship that covers tuition costs
 12 included in a prepaid tuition contract, the purchaser may request a refund consisting
 13 of the amount of the value of the prepaid tuition account, not to exceed the amount
 14 of the scholarship.

15 ~~(5)~~~~[(6)]~~ If the purchaser wishes to transfer funds from the prepaid tuition account to
 16 the Kentucky Educational Savings Plan Trust, the purchaser may do so under
 17 administrative regulations promulgated by the board and the board of directors of
 18 the Kentucky Educational Savings Plan Trust under KRS 164A.325. The transfer
 19 amount shall be calculated in the same way a refund is determined in accordance
 20 with this section.

21 ~~(6)~~~~[(7)]~~ If the purchaser wishes to transfer funds from the prepaid tuition account to
 22 another qualified tuition program as defined in 26 U.S.C. sec. 529(b)(1), the
 23 purchaser may do so under administrative regulations promulgated by the board.
 24 The transfer amount shall be calculated in the same way a refund is determined
 25 in accordance with this section.


26 ~~(7)~~~~[(8)]~~ The board may terminate a prepaid tuition contract at any time due to the
 27 fraud or misrepresentation of a purchaser or qualified beneficiary with respect to the

1 prepaid tuition contract.

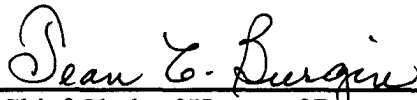
2 (8) All operations of the Commonwealth postsecondary education prepaid tuition
3 trust fund and the Tuition Account Program Office shall end on June 30, 2028.
4 On or before that date, any remaining prepaid tuition account funds that have
5 not been utilized, transferred to another qualified tuition program, or refunded
6 upon the request of the purchaser shall be refunded to the purchaser in
7 accordance with subsection (2) of this section.



Speaker-House of Representatives



President of Senate

Attest: 

Chief Clerk of House of Representatives

Approved 

Governor

Date 4-7-14